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1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 10-13164-cgm

4 - - - - - x

5 In the Matter of:

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7 FAIRFIELD SENTRY LIMITED AND NOMURA INTERNATIONAL PLC,

8 Debtors.

9 - - - - - x

10 Adv. Case No. 10-03630-cgm

11 - - - - - x

12 FAIRFIELD SENTRY LIMITED (In Liquidation) et al.,

13 Plaintiff,

14 v.

15 HSBC SECURITIES SERVICES (LUXEMBOURG) SA et al.,

16 Defendants.

17 - - - - - x

18 Adv. Case No. 10-03635-cgm

19 - - - - - x

20 FAIRFIELD SENTRY LIMITED (In Liquidation) et al.,

21 Plaintiff,

22 v.

23 UNION BANCAIRE PRIVEE, UBP SA et al.,

24 Defendants.

25 - - - - - x

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1 Adversary proceeding: 10-03630-cgm **Fairfield Sentry Limited**
2 (In Liquidation) et al v. **HSBC Securities Services**
3 (Luxembourg) SA et al
4
5 Doc# 253 Notice of Hearing to consider Letter Requesting a
6 Pre-Motion Discovery Conference (related document(s) 250)
7 Filed by David Elsberg on behalf of **Fairfield Sentry Limited**
8 (In Liquidation), **Fairfield Sigma Limited (In Liquidation)**,
9 acting by and through the Foreign Representative thereof,
10 Kenneth Krys, solely in his capacity as Foreign
11 Representative and Liquidator thereof, Greig Mitchell,
12 solely in his capacity as Foreign Representative and
13 Liquidator thereof and Letter in Response to Request for
14 Pre-Motion Discovery Conference Filed by Michael C. Lambert
15 on behalf of **Private Space Ltd.. (related document(s) 252,**
16 251) filed by Clerk of Court, United States Bankruptcy
17 Court, SDNY. with hearing to be held on 12/14/2022 at 10:00
18 AM at Videoconference (ZoomGov) (CGM)
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1 Doc. #250 Motion to File Under Seal Certain Exhibits to the
2 Pre-Motion Letter of David Elsberg filed by David Elsberg on
3 behalf of Fairfield Sentry Limited (In Liquidation),
4 Fairfield Sigma Limited (In Liquidation), acting by and
5 through the Foreign Representative thereof, Kenneth Krys,
6 solely in his capacity as Foreign Representative and
7 Liquidator thereof, Greig Mitchell, solely in his capacity
8 as Foreign Representative and Liquidator thereof.

9 (Attachments: # 1 Proposed Order) (Elsberg, David)

10

11 HEARING re Adversary proceeding: 10-03635-cgm Fairfield
12 Sentry Limited (In Liquidation) et al v. Union Bancaire
13 Privee, UBP SA et al

14

15 Doc# 956 Notice of Adjournment of Hearing RE: Pre Trial
16 Conference; hearing held
17 and adjourned to 12/14/2022 at 10:00 AM at Videoconference
18 (ZoomGov) (CGM) .

19

20 HEARING re Adversary proceeding: 10-03636-cgm Fairfield
21 Sentry Limited (In Liquidation) et al v. Union Bancaire
22 Privee, UBP SA et al

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1 Doc# 1037 Notice of Adjournment of Hearing RE: Pre Trial
2 Conference; hearing held and adjourned to 12/14/2022 at
3 10:00 AM at Videoconference (ZoomGov) (CGM) .

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25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

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3 S E L E N D Y G A Y E L S B E R G P L L C

4 A t t o r n e y s f o r V a r i o u s F a i r f i e l d E n t i t i e s

5 1 2 9 0 A v e n u e o f t h e A m e r i c a s , 1 7 t h F l o o r

6 N e w Y o r k , N Y 1 0 1 0 4

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8 B Y : D A V I D E L S B E R G

9 J U L I E R O S E S I N G E R

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11 G I L M A R T I N , P O S T E R S H A F T O L L P

12 A t t o r n e y s f o r P r i v a t e S p a c e L t d .

13 8 4 5 T h i r d A v e n u e , 1 8 t h F l o o r

14 N e w Y o r k , N Y 1 0 0 2 2

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16 B Y : M I C H A E L C . L A M B E R T

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1 P R O C E E D I N G S

2 THE COURT: Good morning. The first one I have on
3 the calendar is 10-03630 Fairfield Sentry Limited v. HSBC
4 Security Services and I know those names have changed.
5 State your name and affiliation.

6 MR. ELSBERG: Good morning, Your Honor. This is
7 David Elsberg for the liquidators, and here with me is my
8 colleague Julie Singer who is one of our associates and
9 today will be her first oral argument.

10 MS. SINGER: Good morning, Your Honor.

11 THE COURT: Good morning.

12 MR. LAMBERT: Good morning, Your Honor. This is
13 Michael C. Lambert representing the defendant Private Space
14 Limited in matter 10-03630.

15 THE COURT: Just for you all's benefit, discovery
16 disputes, no judge likes, but this much paper for -- and
17 that doesn't include the stuff that's under seal because I
18 don't print the stuff that's under seal, so you may begin,
19 Lambert -- I mean, miss -- I'm sorry, your name again?

20 MS. SINGER: Julie Singer for the joint
21 liquidators, Kenneth Krys and Greig Mitchell. Good morning,
22 Your Honor.

23 THE COURT: Good morning.

24 MS. SINGER: On this motion, we're asking the
25 Court to compel defendant Private Space Limited to produce

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1 emails relevant to personal jurisdiction so that we can use
2 them in opposing Private Space's motion to dismiss.
3 Private Space's counsel already reviewed these emails and
4 the emails are relevant and responsive, but Private Space is
5 sitting on them refusing to hand them over. Until recently,
6 Private Space had not produced a single email to the joint
7 liquidators.

8 THE COURT: Let me interrupt you just, Ms. Singer,
9 for one question. Why do you think those emails that you
10 found are responsive?

11 MS. SINGER: For a few reasons, Your Honor. I'd
12 be happy to jump to that point.

13 THE COURT: Yeah, do, please.

14 MS. SINGER: Private Space claims that these are
15 not responsive because our discovery requests are narrow.
16 Your Honor, that is simply incorrect. Taking a step back
17 for a moment, Private Space is refusing to produce emails
18 because it says a request did not cover emails about its
19 Fairfield investments. Your Honor, these investments are at
20 the heart of the case and at the heart of personal
21 jurisdiction. It's implausible that the liquidators'
22 requests don't cover this.

23 Dozens of defendants received the same or similar
24 requests and not one has produced emails -- excuse me, not
25 one has refused to produce emails on this extreme and quite

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1 bizarre position. In fact, our September 14, 2021 discovery
2 request saw broad jurisdictional discovery with a focus on
3 investment rationale. I'll point to a handful of examples
4 from our request for production.

5 The first request sought documents and
6 communications "concerning any decision made by Private
7 Space to subscribe in Sentry rather than a different fund."
8 And that's Exhibit A which is Docket 251-1. RFP 2 sought
9 documents and communications concerning Private Space's use
10 of U.S. correspondent banks to affect subscriptions in and
11 receive redemptions from Sentry. And RFPs 6 and 15 sought
12 documents and communications exchanged with HSSL regarding
13 HSSL's "actual or potential subscription to shares of the
14 funds and regarding the funds BLMIS, other BLMIS feeder
15 funds, or your subscriptions therein."

16 Your Honor, we know from Private Space's responses
17 and objections that Private Space took a broad reading of
18 these requests. For example, Private Space described RFP 1
19 by saying "On its face, it seeks the production of every
20 document and communication that is in any way related to the
21 fact that PSL made a decision to subscribe in Sentry, a fact
22 that is undisputed."

23 That's what they wrote. Private Space stated that
24 this request was broad and covered documents and
25 communications related to the fact that Private Space made a

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1 decision to subscribe in Sentry. On top of that, the
2 objection does not say Private Space won't produce any
3 emails. It does not specify which categories of documents
4 it would and would not produce. Now Private Space changed
5 its tune and says the requests are too narrow and that's why
6 it won't produce emails.

7 Your Honor, the RNOs were the time to state
8 Private Space's understanding of the request and it did so.
9 It said the request was broad and that it and it would not --
10 - it did not say that it would withhold emails. Private
11 Space cannot play fast and loose with the requirements of
12 the federal rules. As Your Honor has made clear, Rule 34
13 requires parties to object with specificity. Because
14 Private Space did not comply with the rules, it cannot come
15 back later with a post talk excuse for failing to produce
16 emails.

17 Your Honor if I may, I'd like to jump back and
18 tell you a little bit about why the emails are also relevant
19 in addition to responsive.

20 THE COURT: Okay. And anything you put in your
21 exhibits, you're going to have to specify exactly where they
22 are because candidly I did not read everything that came out
23 of the Court. So you need to --

24 MS. SINGER: Sure, Your Honor.

25 THE COURT: -- say. If you're going to refer to

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1 something, you need to say I'm referring to this and you
2 will find it at Paragraph X, Y, Z, whatever it is.

3 MS. SINGER: Yes, Your Honor. When we pushed back
4 on Private Space assertion that not a single email, not one,
5 was responsive or relevant. Private Space took the
6 extremely unorthodox step of producing what they called a
7 representative sample, and that's in their letter they say
8 that, Docket 251-4 at Page 4 and they also described it that
9 way in their November 3rd email communication.

10 The sample was just nine emails, nine out of
11 hundreds that it said it reviewed. Private Space later
12 referred to this as a random sample of email. That's Docket
13 252, Page 3. That isn't how discovery is supposed to work
14 under the federal rules. A party doesn't get to cherry pick
15 or choose at random a tiny fraction of relevant responsive
16 emails to produce and hold back the rest.

17 The default under the federal rules is that you
18 produce all responsive, relevant, nonprivileged documents
19 kept in the ordinary course, full stop. Instead, Private
20 Space produced a 17-page scanned PDF that consisted of nine
21 emails. That PDF does not have any metadata and it includes
22 an incomplete set of attachments. This is despite Your
23 Honor's instructions in prior hearings that defendants
24 needed to produce both metadata and attachments. We
25 submitted that document that Private Space gave us as

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1 Exhibit E to our letter and that's Docket 251-5.

2 Private Space is still refusing to produce the
3 rest of its relevant responsive emails. Your Honor, this is
4 simply not permissible, especially given your prior rulings
5 on the relevance of emails for showing jurisdiction. In
6 June, Your Honor decided a motion to dismiss in one of the
7 BLMIS Trustee actions because the defendant allegedly
8 "communicated with FGG employees located in New York via
9 mail and email." That's *Picard v. Bank Lombard Odier*, 2022
10 Westlaw 2387523.

11 The joint liquidators are entitled to see all
12 responsive and relevant emails, not just the ones that the
13 defendant cherry picks for us to see. I'd like to discuss
14 Private Space's scan PDF to get into more detail why the
15 emails are relevant. I'll touch on just a couple examples,
16 and because Private Space marked these emails confidential,
17 I'll describe them at a high level of generality.

18 The first is a March 29th, 2004 email. It's at
19 Page 12 of the PDF which is Exhibit E, Docket 251-6. The
20 Bait Stamp is PSL-0401. This email shows that Private Space
21 purposely availed itself of the U.S. securities market
22 because it was intending to invest in that market through
23 Sentry and BLMIS. The email is from an employee of the
24 fund's former manager FGG to a Private Space custodian.

25 It attaches an investment profile for Fairfield

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1 Sentry and describes Sentry's strong performance due to the
2 split-strike conversion strategy.

3 Your Honor, the split-strike conversion strategy
4 was synonymous in the industry with Bernie Madoff. Emails
5 like this one show that when Private Space subscribed in
6 Sentry, it knew its money was to be invested in the U.S.
7 securities market through Bernie Madoff and that fact
8 supports jurisdiction under the Picard v. Bureau of Labor
9 Insurance case. That's 480 B.R. 501 which Your Honor has
10 cited in numerous recent decisions.

11 Judge Lifland's decision held that "A party
12 purposely avails itself of the benefits and protections of
13 New York laws by knowing, intending, and contemplating that
14 the substantial majority of funds invested in Fairfield
15 Sentry would be transferred to BLMIS in New York to be
16 invested in New York security market."

17 The second example I'd like to look at is a
18 February 13th, 2007 email which you can see at Page 4 of
19 that PDF. Again, that's Exhibit E, Docket 251-6. And this
20 one is Bates stamped PSL-0393. This one shows direct
21 contact between FGG in the U.S. and Private Space. It
22 reflects a communication from an FGG employee from what
23 appears to be a U.S.-based email address based on the
24 context of the email.

25 I'd like to move to another related issue. Even

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1 if Private Space were allowed to produce only a
2 representative sample, and it is not, there's another big
3 problem with Private Space's sampling approach. The sample
4 is not representative. It is under inclusive and we know
5 that because third parties produced emails involving Private
6 Space that Private Space did not produce to us themselves;
7 and these types of emails are not represented in Private
8 Space's sample.

9 Your Honor, we filed an example under seal as
10 Exhibit F to our letter. That's Docket 251-61 and the Bates
11 stamp there is Anwar CFSE-00742917. I want to stress that
12 this is a Private Space email that Private Space did not
13 produce. It's a March 30th, 2005 communication from one of
14 Private Space's custodians to the record holder, HSSL.

15 The email refers to a call Private Space had with
16 Fairfield and includes a question about a Fairfield
17 subscription. It shows that Private Space directed HSSL to
18 act on its behalf with respect to its Sentry investments,
19 and as a communication with HSSL it should have been
20 produced. Counsel claims that the email is utterly
21 irrelevant because it dealt with what he describes as a
22 glitch or question about completion of the transaction.
23 That's Docket 252-5.

24 But Private Space does not get to withhold emails
25 from discovery just because it thinks they're mundane.

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1 Sometimes the most mundane emails can be the most relevant
2 to personal jurisdiction. There are many more emails. We
3 produced another 80 or so on November 11th. Counsel
4 completely ignores those emails in his letter response.
5 They show Private Space contacting FGG employees in the
6 United States concerning their investments.

7 They also support an inference that Private Space
8 knew its subscriptions were being directed to BLMIS for
9 investment in the United States. These other emails show
10 that Private Space's representative production is not at all
11 representative. Your Honor, like Exhibit F, these emails
12 were stamped by the producing parties as confidential and
13 we'd be happy to provide them under seal at your request.

14 I expect that Private Space will tell us there are
15 two other reasons why it should not have to produce emails,
16 one, that a stipulation would suffice as a replacement for
17 documents, and two, that it would be burdensome to produce
18 the emails. Each should be rejected. I'll address them in
19 turn.

20 First, a stipulation is unworkable. In order for
21 a stipulation to work as a substitute for document
22 discovery, it would need to include details about the
23 defendant's decision making in making its investment and the
24 nature of defendant's contacts. Counsel had the opportunity
25 to proceed by a stipulation of this sort earlier this year.

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1 When defendants including Private Space raised the idea of a
2 stipulation, we in good faith prepared a draft stipulation
3 for their consideration in April. Counsel rejected our
4 stipulation and sent us a counter proposal in June that
5 stripped out all the detailed language we proposed.

6 Private Space's proposal doesn't offer nearly the
7 level of detail required to be an appropriate substitute for
8 document discovery. The liquidators have the burden to
9 establish jurisdiction and Private Space can't just
10 unilaterally decide what information we can and can't have
11 to build our argument and rebut theirs.

12 Further, there's no efficiency to be gained by
13 further negotiating a stipulation at this point. We think
14 it would be much more productive if the parties were simply
15 to go about with productions. Private Space has already
16 reviewed these documents and can produce them. That's more
17 efficient than trying to bridge a gap between two polar
18 opposite stipulations.

19 Next, I'll address the issue of burden. I expect
20 counsel will say that his client shouldn't have to undertake
21 the burden of producing these emails, but counsel has
22 already reviewed all of the emails we are seeking. The bulk
23 of the work here is done. Now the emails have been sitting
24 with Private Space for over a month since they were
25 reviewed. Counsel says he may need to redact some of those

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1 emails to comply with foreign law or data privacy rules but
2 redacting several hundred emails is a routine part of
3 document discovery and doesn't create an undue burden.

4 In summary, Your Honor, producing emails is part
5 of modern discovery. Private Space's representative or
6 random sample does not suffice under the federal rules.
7 Your Honor, we respectfully ask you to compel Private Space
8 to produce all of the emails along with metadata and
9 attachments. I'm happy to answer any questions Your Honor
10 may have.

11 THE COURT: You answered the question that I had.

12 MS. SINGER: Thank you.

13 THE COURT: And Mr. Lambert, as I go to you, I
14 have a question to ask you as you begin your argument.

15 MR. LAMBERT: Sure, Your Honor --

16 THE COURT: No, I'll wait until the end. Okay.
17 Go ahead.

18 MR. LAMBERT: Did you have a question for me to
19 start, Your Honor?

20 THE COURT: No, I'll ask it after.

21 MR. LAMBERT: Okay. Thank you, Your Honor.

22 Michael C. Lambert for defendant Private Space Limited.
23 It's very clear from Ms. Singer's presentation that the
24 liquidators' position is fundamentally that they are
25 entitled to see all emails from private -- that Private

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1 Space received or sent that have anything to do with
2 Fairfield. That is simply not the case.

3 The starting point, Your Honor, is the federal
4 rules of civil procedure, specifically Rule 34, and the
5 question there is what have they actually requested? Number
6 two is, the second starting point is Your Honor's order of
7 November 2021 allowing jurisdictional discovery to proceed
8 and only jurisdictional discovery to proceed. Private Space
9 objected in its formal responses to the existing document
10 request.

11 THE COURT: I want you to point to one page on
12 that 17 -- on those 17 pages that is about jurisdiction.

13 MR. LAMBERT: Which 17 --

14 THE COURT: It's about -- that you gave them in
15 discovery.

16 MR. LAMBERT: I'm sorry, Your Honor. What was
17 your question? What 17 --

18 THE COURT: Never mind. Go ahead and argue. Go
19 ahead and argue. I'm sorry I interrupted you.

20 MR. LAMBERT: Okay, no. No problem, Your Honor.
21 And in our response to their document request which is
22 Exhibit A to my letter to the Court on this current dispute,
23 Docket 252, we expressly objected to proceeding on merits
24 discovery. Private Space engaged in broad searches. We
25 have not refused our priority to reproduce -- to produce any

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1 emails. We in fact searched for responsive and relevant
2 emails and we found none that are responsive. Now the
3 background to this dispute, Your Honor, is that Private
4 Space served its response to the existing document request
5 back in February.

6 After we served our responses to their discovery
7 requests, both document and interrogatories, we engaged in
8 some extensive back and forth with liquidators' counsel
9 which took several months and ended in June. The last
10 correspondence was a letter that I sent to them on June the
11 3rd which was the same letter that contained our counter
12 proposed stipulation. We never received a response from the
13 liquidators.

14 In the beginning of October, fully eight months
15 after we produced our documents in February was the first
16 time that the liquidators raised this question about the
17 lack of any emails in our production. And the reason for
18 the lack of emails is not because we refused to search for
19 them, it is that we found none that were responsive to the
20 actual requests that were set forth in the liquidators' Rule
21 34 request or that were -- and/or that were relevant to
22 jurisdiction.

23 Among the documents that we produced back in
24 February -- again, ten months ago at this point -- were the
25 custodian agreement we had with our custodian HSBC Security

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1 Services Luxembourg, the various subscription agreements as
2 well as the transactional documents pursuant to which
3 Private Space actually invested in Sentry and Sigma. We did
4 that through HSSL as our custodian.

5 Those documents included the instructions to HSSL
6 to subscribe and or redeem, the instructions that that HSSL
7 then passed on to the funds agent Citco to effectuate the
8 subscriptions or redemptions, and then the related
9 confirmations. And I want to point out to Your Honor that
10 all of those transactions were conducted via fax, not email,
11 and there is no dispute whatsoever as to the fact, the
12 number, the amount, and the timing of any of Private Space's
13 investments in Sentry or Sigma.

14 Once they raised this issue of the lack of any
15 emails in our production, we engaged in a series of meet and
16 confers during October and early November, and during the
17 course of those meet and confers, I agreed that we would
18 again review the emails that we had found the first time out
19 and there were several hundred of them that we found that
20 related in some form to Fairfield -- our investment in
21 Fairfield, even though we concluded that none were
22 responsive to any of the actual requests that the
23 liquidators sent to Private Space.

24 And we also conducted -- you know, we looked at
25 the issue again, and again we found no responsive emails and

1 what we did produce -- now I'll get to the question of the
2 samples that Ms. Singer referred to -- we are not taking the
3 position that samples are -- suffice, that we shouldn't have
4 to produce all of the emails because we produced some
5 samples. We produce the samples so they could see for
6 themselves that the emails that we found were in fact
7 nonresponsive and irrelevant to jurisdiction.

8 Now, let me divide these emails that we found in
9 the samples into two buckets because they relate to two
10 different aspects of the case. One of them is we found over
11 a hundred what I call weekly and monthly reports that
12 Fairfield Greenwich Group emailed to all of their customers.
13 These were simply -- and these were some of the samples we
14 sent them. They were basically one- or two-page documents
15 which did nothing more than list the net asset value at the
16 time, the month to date performance of the particular fund
17 and the year-to-date performance of the particular fund.

18 Could we produce all several hundred? Sure we
19 could, but there's no point to doing it because they're not
20 responsive to any outstanding document request. Ms. Singer
21 pointed out that some of those emails may have emanated from
22 a Fairfield Greenwich email address in the United States.
23 Well, I submit that getting an email from an address in the
24 United States does not subject the recipient of that email
25 to jurisdiction.

1 As for the split, the reference in those emails to
2 this split-strike conversion, yes, it was clearly known to
3 anyone in this business that that was a reference to BLMIS
4 and we in fact have offered to stipulate that at the time we
5 made our initial investments in Fairfield, we knew that it
6 was Fairfield's intention to reinvest the bulk of its money
7 in BLMIS.

8 I mean, that's one of the two jurisdictional
9 predicates that is set forth in Paragraph 20 of the fourth
10 amended complaint against Private Space Limited, but we
11 submit that that's an irrelevant consideration and that is
12 not a proper jurisdictional predicate for holding Private
13 Space in, just because we invested in a British Virgin
14 Islands fund that was going to reinvest its own money in
15 BLMIS, which was New York based.

16 So again, we produced the samples, not because
17 they were responsive, we think that that takes care of our
18 discovery burden; we contend that those samples of these
19 weekly and monthly reports which are irrelevant and
20 unresponsive to any of their requests, including the one
21 request that Ms. Singer referred to which is documents which
22 would, which would relate to decision that Private Space
23 made to subscribe to Sentry rather than a different fund.
24 Different fund is defined in their document request as Sigma
25 or Lambda, and none of those documents reflect why we

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1 invested in Sentry as opposed to Sigma.

2 The next bucket of documents, Your Honor, are any
3 emails that might have passed between Private Space and its
4 custodian, HSSL. Now again, the searches that we undertook
5 were broad enough that they would have picked up any emails
6 between HSSL and Private Space. The first thing that Your
7 Honor needs to be aware of is that HSSL acted solely as a
8 custodian for Private Space. It made subscriptions or
9 redemptions on behalf of Private Space only when expressly
10 instructed to do so by Private Space.

11 It was not an investment advisor to Private Space
12 and had no input into Private Space's investment decisions.
13 That -- we swore to that in an answer to one of the
14 liquidators' interrogatories and in particular Interrogatory
15 No. 12, which is attached as Exhibit B to my letter to the
16 Court, Docket 252. The only emails between HSSL and Private
17 Space that we found relating to Fairfield involved routine
18 statements of the numerous investments that HSSL was holding
19 for Private Space that HSSL regularly emailed to Private
20 Space, other than a few, you know, back office recordkeeping
21 emails typical of any custodian relationship.

22 Now Ms. Singer pointed out that we don't get to
23 choose just because they're trivial. No, we don't get to
24 choose, but we also have no obligation to respond to
25 nonexistent requests. The only request that I submit is

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1 even remotely responsive, remotely relevant here, is request
2 number two in their document request which reads, "Documents
3 and communications concerning your use of U.S. correspondent
4 banks to effect subscriptions in and receive redemptions
5 from Sentry, including but not limited to those concerning
6 the purpose of using U.S. correspondent banks."

7 Now, if there were any emails between HSSL and
8 Private Space relating to the use of a U.S. correspondent
9 bank, would they be relevant and should they be produced?
10 The answer is of course yes. But we found no such emails
11 and nor did we expect to find any such emails, for the
12 simple reason that the need for a U.S. correspondent bank to
13 play a role when transactions are made using U.S. dollars
14 was well known to Private Space and did not require
15 communications on the subject with HSSL.

16 Furthermore, under the terms of its custodian
17 agreement with HSSL, which again we produced back in
18 February, the choice of correspondent banks in whatever
19 currency was solely the responsibility of HSSL.
20 Furthermore, the documents that Private Space did produce
21 back in February -- again almost 10 months ago -- explicitly
22 show that a U.S. correspondent bank was in fact designated
23 in Private Space's Sentry subscription agreements and in the
24 fact subscription transaction documents themselves that we
25 produced back in February.

1 In short, the lack of any relevant and responsive
2 emails between Private Space and HSSL, its custodian, is
3 neither surprising nor suspicious. It is undisputed and
4 already amply documented in our February document production
5 that a U.S. correspondent bank was in fact used to
6 effectuate transactions involving Private Space's investment
7 in Sentry. Now if you go to these again, I want to turn
8 back to the other set of documents that we found relating to
9 HSSL and these were every week or every month and I think
10 sometimes it was weekly, sometimes it was monthly.

11 HSSL as our custodian would send us emails listing
12 all the positions they were holding for us. Private Space
13 had extensive holdings in other funds and other investments
14 that had nothing to do with Fairfield. These reports simply
15 list the various positions that HSSL were holding. They
16 were sent by email. We did send them two of the sample
17 cover emails. Most of these emails have multiple
18 attachments having nothing whatsoever to do with HSSL. All
19 they do is list the price of which we paid the stock and
20 what it was current valued at.

21 There's no qualitative analysis whatsoever
22 performed by HSSL and that's why I said that if we had to
23 produce these documents which were irrelevant, all they do
24 is list what our holdings were in Sentry or Sigma at any
25 given point in time and that's not in dispute. If you look

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1 at our discovery responses, our interrogatory answers,
2 there's no dispute as to the timing of our investments, our
3 multiple investments in the Sentry and Sigma, how much they
4 were, when they were -- when they were made, and when they
5 were redeemed.

6 So it's an incredibly burdensome exercise to think
7 that we should have to produce hundreds of these periodic
8 position statements which 95 percent of them relate to other
9 holdings of Private Space. So the answer to that is that we
10 found no responsive emails between Private Space and HSSL
11 that are responsive to any of the specific requests that
12 liquidators served on us.

13 Now let me turn to the one -- the point that Ms.
14 Singer made about third parties producing emails that -- in
15 which custodians of Private Space were involved that we did
16 not produce. She referred to one that's attached to their
17 submission to the Court. I think it's Docket 251, which is
18 an email from one of our custodians and what that email
19 simply does is that with respect to one of these
20 transactions in which we invested in Sentry -- again, we
21 produced all of the actual transaction documents which were
22 done by fax -- apparently, someone from Private Space got a
23 call from someone at Fairfield and saying that, you know, we
24 didn't get the money yet.

25 So we sent our custodian who made the investment

1 on our behalf, said we just got this request. We thought
2 the money had been invested and they did a -- sent a follow
3 up email to Fairfield Greenwich Group and they got the
4 glitch straightened out. That document is not responsive to
5 any document request. None of the emails in that chain have
6 U.S. addresses in them and so the fact that we didn't
7 produce them as not responsive that we withheld anything
8 that's relevant.

9 The fact that that investment was made and
10 confirmed is, documented in the fax documents that we
11 produced to the liquidators back in February. So to sum up,
12 Your Honor, again, we produced our documents in good faith
13 back in February. Eight months later, they apparently
14 noticed for the first time there were no emails. The reason
15 for there was no emails is that we in good faith found that
16 there was none that were responsive to any of their requests
17 or that otherwise related to the jurisdictional issue, which
18 is the sole focus of the discovery that we're conducting at
19 the moment. I'd be glad to answer any questions Your Honor
20 may have.

21 THE COURT: I don't have them yet. Ms. Singer,
22 you wish to add something?

23 MS. SINGER: Just a few points, Your Honor. One
24 is that several of counsel's arguments go to the
25 significance of the email contacts. He can address these in

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1 the briefing after he's produced the documents to us. And
2 again, we're not saying that mere receipt of an email is
3 always sufficient, but these emails contain information to
4 support jurisdiction like references to BLMIS. Counsel
5 admits that the emails and the sample discussed the split-
6 strike strategy and that that was synonymous with Bernie
7 Madoff.

8 As I discussed in going through the examples,
9 that's a very important fact for personal jurisdiction under
10 the BLI case --

11 THE COURT: Can you point me -- can you point me
12 to the emails that you have that say that?

13 MS. SINGER: Sure. So the email that discusses
14 the split-strike strategy that I referred to, that's Exhibit
15 E, which is Docket 251-6. And the Bates number there is
16 PSL-0401, PSL-0403. Again, that's synonymous with Bernie
17 Madoff and it's an important fact to establish personal
18 jurisdiction under Picard v. the Bureau of Labor Insurance
19 case.

20 I'd also like to go back to RFP 1. The time to
21 object or to state an understanding of that RFP was in the
22 R&O. I want to stress again, counsel read that RFP broadly.
23 He did not say he was taking a narrow view and would produce
24 no emails in response. In addition, counsel talks about
25 email correspondence with HSSL. That was also requested in

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1 the RFPs, RFP 6 and RFP 15.

2 In addition, it's not just that these emails are
3 about wire transfers and confirmation. Things like due
4 diligence, getting information about the investments. These
5 all go to personal jurisdiction, not just straightforward
6 transaction receipts wire transfer requests, or
7 confirmations.

8 I'd be happy to answer any questions Your Honor
9 has.

10 THE COURT: Mr. Lambert, any quick rebuttal on
11 that?

12 MR. LAMBERT: Just briefly. I couldn't disagree
13 more with what Ms. Singer said about Request No. 16 and
14 Request No. 15 as requesting emails between us and HSSL.
15 Yes, if there were emails that were otherwise responsive to
16 that, you know, we would have produced them. But if you
17 look, it's very clear to me that we have no emails that we
18 have found that are responsive either to Request No. 6 or
19 No. 15.

20 And with respect to the email that refers to the
21 split-strike conversion, these were standardized reports.
22 It's a box grid in these reports that went out from FGG to
23 its customers. As I said before, they weren't, you know,
24 tailored or customized. They don't appear to be tailored or
25 customized to Private Space. It's just a box and it says --

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1 I have a hard time reading the copy I have, but the
2 reference to split-strike conversion is simply a statement
3 that the investment strategy is "split-strike conversion."

4 That same box appears in each and every one of
5 these weekly and monthly reports. There's no added value.
6 It's just a reference to split-strike conversion. You know,
7 we contend that that this document is not responsive even if
8 it came from a U.S. email address because, you know, the --
9 getting an email, as I said before, getting a -- being a
10 recipient of an email and even if it did emanate from a US
11 email address, which I'm not too sure is the case, I mean
12 most of -- you know, all of our basically Private Space's
13 contacts were with FGG people who are based in Europe.

14 So even if they used an FGG U.S. email address to
15 send these reports out, I submit that that doesn't subject
16 the recipient of these reports to U.S. jurisdiction because
17 they received an email from a U.S. address and I think
18 that's all I have Your Honor.

19 THE COURT: Very good. I'm going to take a break.
20 Chambers.

21 (Recess)

22 MS. SINGER: Your Honor, I think you're on mute.

23 THE COURT: And I just got yelled at by everybody
24 else. So federal rules of civil -- what I was going to say
25 is I basically just want to have a conversation. But the

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1 first thing is I want to put the law out so we know what
2 we're dealing with.

3 "Unless otherwise limited by Court order" -- Mr.
4 Lambert, are you on with us?

5 MR. LAMBERT: Yes I am, Your Honor.

6 THE COURT: Okay. I just didn't see you.

7 MR. LAMBERT: (indiscernible).

8 THE COURT: "Parties may obtain discovery
9 regarding any nonprivileged matter that is relevant to any
10 party's claim or defense and proportional to the needs of
11 the case considering the importance of the issues at stake
12 in the action, the amount and cost, the party's relative
13 access to the relevant information and the party's
14 resources, the importance of discovery in resolving the
15 issues, whether the burden or expense of the proposed
16 discovery outweighs its likely benefit. Information within
17 the scope of discovery need not be admissible in evidence to
18 be discoverable."

19 Okay. So there are a couple -- I see that there
20 are two things going on and you all correct me if I'm wrong.
21 It's first those summaries of the trades of Fairfield and
22 you gave them three representative samples. Is that true,
23 Mr. Lambert?

24 MR. LAMBERT: I'm sorry, Your Honor. I gave them
25 samples of the types of emails that we found, okay --

1 THE COURT: I'm not looking at the -- I'm not
2 talking about the emails right now. I'm talking about those
3 three that are from Marco or (indiscernible).

4 MR. LAMBERT: Those -- well, those are emails.
5 Those are emails --

6 THE COURT: I understand they're emails but
7 they're the -- they're representative of the trades. That
8 was the key word in the phrase, of the trades.

9 MR. LAMBERT: No, they're not, Your Honor.
10 They're basically just weekly reports as to how the funds
11 were doing with respect to any of the specific investments.

12 THE COURT: Okay. All right. All right. No
13 matter, you're using -- I agree with you. They're
14 statements. Okay. I don't need full ten years of
15 statements and neither do they, but I need more than three,
16 and so do they and you need more of a -- if you're going to
17 do a representative sampling, we need a real representative
18 sampling.

19 And if Marco (indiscernible) I never pronounce his
20 name right -- changes, we need a sample of when those
21 change. So go out, you all can stipulate whatever. You
22 don't need every week, every month for ten years but you
23 need more than three. And it seems to me, you all can talk
24 and get that straightened out.

25 Now then let's go to the emails that were

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1 discovered that then we're not produced by you. And I think
2 they're -- began the Judith Sterling ones in March of 2005
3 that were found in other documents that were produced by
4 other people. If this was in response to investing in
5 Fairfield, those are critical. So I need those also, any
6 emails like that from your client's email database including
7 all the data behind it.

8 Now, does that cover everything that's in
9 controversy today?

10 MR. LAMBERT: Yeah, but Your Honor, just on that
11 last point, in investing in Fairfield, I mean the documents
12 pursuant to which our client invested in Fairfield were
13 conducted by fax. We produced those documents back in
14 February.

15 THE COURT: Okay. Have those been produced and do
16 you have them? And are there any emails in connection with,
17 for instance, the Judith Selene or whatever her last name
18 is, March of 2005 emails that talk about investing in
19 Fairfield?

20 MR. LAMBERT: I don't believe so, but I can
21 certainly double check. I mean the answer is that email,
22 that one email we're talking about was simply apparently
23 they didn't get the money when we thought they got the money
24 and we sent an email to HSSL, say, would you follow up on
25 this because you told us the investment was done. I mean

1 the fact that that investment was done is confirmed by the
2 emails --

3 THE COURT: Then we want it from your client's
4 database, not from somebody else's database.

5 MR. LAMBERT: Right, but that --

6 THE COURT: -- someone else --

7 MR. LAMBERT: I understand. If there are any
8 other emails that relate to our investments, certainly can
9 make another search, Your Honor.

10 THE COURT: Very good. Now then. Okay. Ms.
11 Singer --

12 MS. SINGER: Your Honor, to address your question
13 --

14 THE COURT: Yes.

15 MS. SINGER: To address your question as to
16 whether this covers everything, if I understand you
17 correctly, you're saying that for the reports we need to get
18 more and for all other emails that are just --

19 THE COURT: -- don't want ten years of them, but
20 you want enough that gives a true representative sampling
21 and three is not enough for ten years.

22 MS. SINGER: And for emails that are distinct from
23 that, we need all of them. Is that your --

24 THE COURT: Anything that talks about response to
25 investing in Fairfield, if there are any emails whatsoever,

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1 they need to be produced. Now, Mr. Lambert, I'm not going
2 to allow them to file a motion to compel yet, but I am going
3 to, if these things are not produced. And if there's any
4 question, Mr. Lambert, you can give it to us in camera and
5 we can make a decision.

6 MR. LAMBERT: Give it to you in what?

7 THE COURT: In camera.

8 MR. LAMBERT: Okay.

9 THE COURT: So when do you want to come back and
10 report to me again? February -- January the 18th? That's a
11 month. No, let's do February 15th.

12 MS. SINGER: We propose as soon as is convenient
13 for Your Honor so that we can get the --

14 THE COURT: Well, January the 18th is convenient.
15 All this is convenient. I have a -- this is the day I set
16 aside for all of this. Your Honor, I have no objection to
17 reporting back to Your Honor by that January date you gave
18 us.

19 THE COURT: Okay. And if you have any -- if you
20 have any question, you can just give it to Court in camera
21 and we'll take a look at it.

22 MR. LAMBERT: What was that date again in January,
23 Your Honor?

24 THE COURT: Eighteenth. And I'm sorry, my
25 computer seems to be having a little bit of a delay, Mr.

1 Lambert.

2 MR. LAMBERT: Yes. And it's also coming back very
3 staticky for some reason, but I can hear Your Honor.

4 THE COURT: Very good. Okay and --

5 MS. SINGER: Thank you, Your Honor.

6 THE COURT: Very good. Thank you.

7

8 (Whereupon these proceedings were concluded at
9 11:20 AM)

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1 C E R T I F I C A T I O N

2

3 I, Sonya Ledanski Hyde, certified that the foregoing
4 transcript is a true and accurate record of the proceedings.

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Sonya M. Ledanski Hyde

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8 Sonya Ledanski Hyde

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